



# STATE OF CONNECTICUT

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Testimony presented to the Program Review and Investigations Committee of

The Connecticut General Assembly

By the Connecticut Department of Agriculture

March 5, 2013

**Raised Bill 988 –AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING THE FARMLAND PRESERVATION PROGRAM**

The Connecticut Department of Agriculture would like to thank Chairmen Kissel and Mushinsky, Ranking Members Fonfara and Carpino and the entire membership of the Committee for the opportunity to present our testimony to the Program Review and Investigations Committee.

The legislative program review of Connecticut's farmland protection efforts is welcome and offers great promise and opportunity to sharpen our focus as we strive to preserve our state's most valuable agricultural lands in perpetuity. Sincere appreciation is extended to the committee and its professional staff for the manner in which it examined the complexities of the program and for the thoroughness of its report and recommendations. We are grateful for the opportunity to provide testimony on your recently completed report as it relates to the proposed legislation.

The Commissioner of the Connecticut Department of Agriculture (DoAg) is a former staff person in both DoAg's Farmland Protection and DEEP's Land Acquisition and Property Management programs—as well as a former director of both the Connecticut Farmland Trust and Joshua's Tract Conservation and Historic Trust—and has a unique vantage point in considering your report and its recommendations.

Generally, the Results-Based Accountability review of the program is a very helpful tool for the agency as a whole, and specifically, for guiding the direction and initiatives of the Farmland Preservation Program. While we concur with a number of observations and recommendations in the report, we must respectfully caution that the cause and remedy stated in many areas is directly related to available staffing and resources.

It is also important to note that DoAg, as a small agency, relies heavily on the Farmland Preservation Program staff to perform critical functions and manage a number of programs that, although related, are clearly outside the scope of development rights acquisition. While the report cites some of these

obligations, it seems to fall short in recognizing the implications of these competing demands, and seems to fall short in adequately recognizing the extreme effort that is made to balance these statutory and programmatic obligations with finite human and financial resources.

Further challenging this balancing act is the fact that the Farmland Preservation Program does not currently have a director. Longtime program director Joseph Dippel assumed the responsibilities of bureau director after a May 31, 2012, retirement and the position of farmland preservation director remains vacant. The prospects of filling the vacancy are clouded by state budgetary constraints.

In addition, many of the committee's recommendations include the Farmland Preservation Advisory Board (FPAB) performing a multitude of tasks. The board is made up of volunteers who serve without compensation and is staffed by DoAg employees assigned to the Farmland Preservation Unit. Staff time dedicated to important planning efforts necessarily removes them from duties related to farmland preservation projects and will affect the very measures cited in the report.

It is also important to note that two new initiatives, the Community Farms Program and the Farmland Restoration Program, have also been assigned to Farmland Preservation staff, further complicating Results-Based Accountability analyses.

Over the last two years, the agency has pushed to expand its use of outside contractors, personal service agreements, and partnerships in a concerted attempt to get the job done. These efforts and initiatives are geared toward achieving our goals, but should not and cannot be considered a substitute for employing qualified and dedicated staff whose skill, knowledge and value grow over time.

Decades of experience in the acquisition and management of real property and property rights has taught us to be concerned that the uniqueness and complicated nature of protecting working lands through the purchase of development rights is sometimes understated. Separating rights to these lands is a one-way street that demands the serious, informed consideration of the parties involved and results in a relationship that must stand the test of time—in other words, in perpetuity.

Every applicant, application, and acquisition is different; the lay of the land, quality of soils, current use, potential use, and the needs of individual farm families and the owners of farmland need to be considered as projects are negotiated, valued, and concluded. Of course, all decisions have to be made in accordance with statutory and regulatory requirements.

There are two significant changes approved by the legislative and executive branches of state government that significantly altered the paradigm of farmland preservation in the State of Connecticut:

- 1) The Community Investment Act; and
- 2) Lump-sum bond funding.

The Community Investment Act brought the program to staffing levels that it had not had since the administration of Governor William A. O'Neill. It also provided administrative funding critical to basic program functions and allocated transaction funding necessary for the actual purchase of development rights.

The State Bond Commission's semi-annual allocation of bond funds for the purchase of development rights (PDR) has made a meaningful difference on how potential participants view the PDR Program. No longer do owners of some of the best and often the most threatened working lands in Connecticut have to wait for farm-by-farm approval by the State Bond Commission, which sometimes came too late or not at all.

Consistent and adequate funding for farmland preservation has allowed Connecticut's farm families to view the permanent protection of their farms as a realistic business decision that might allow them to transfer the farm to the next generation, transition or diversify operations, build or improve structures, acquire additional farmland, or restructure debt. Without question, the Community Investment Act and lump-sum bond funding are noteworthy milestones that continue to advance farmland preservation in Connecticut.

With respect to a review of the Farmland Preservation Program, there are established goals for review at least once every five years to begin July 1, 2015. The purpose of the review is to re-evaluate the goal and determine whether it is still attainable based on a set of relevant criteria as determined by the board. Any revisions to the goal are to be made in collaboration among the program, board and agriculture commissioner. The board also shall prepare an annual report to the agriculture commissioner on the program's progress toward achieving the goal.

The targets of the Farmland Preservation Program are predicated on studies completed decades ago that considered certain in-state agricultural production and in-season consumption. There is an overriding need to revisit this work and the goals of the Farmland Preservation Program.

We recommend future goals be based on a broader array of factors that might include environmental, economic, health, social and other quality-of-life factors. The Governor's Council for Agricultural Development has identified farmland resources and access to farmland as a priority and consequently great care must be exerted in changing underlying factors.

The proposed legislation requires the Department of Agriculture to develop a written strategic plan for the purchase of farmland development rights. The bill requires the plan to identify farms throughout the state with prime and important soils that best fit with the state's efforts to protect such soils through the acquisition of a farm's development rights. Incorporated within the plan would be short- and long-range strategies for achieving farmland preservation goals. The plan would be coordinated with the state's conservation and development plan, applicable environmental/open space plans, and smart growth principles, and based on the most recent, comprehensive land cover information available. These plans should consider the importance of farming and agriculture in general, and prime and important agricultural soils in particular.

DoAg should develop a strategic plan to guide and inform its farmland preservation efforts. The plan should utilize the objective regulatory scoring criteria, considering prime and important farmland soils; cropland; agricultural use; likelihood of continued agricultural use; location; and other factors, plans, and reports.

It is not practicable or advisable, however, to develop a written strategic plan that identifies specific farms across Connecticut. Identifying privately owned farms in a public document would likely have unintended and lasting negative consequences.

The Farmland Preservation Program is voluntary, and, as a matter of public policy, the State of Connecticut does not compel persons to sell their land or rights in land for conservation purposes. Most landowners, notably farmers, may not wish to see their land on an acquisition list in a state plan. Some may view this as a threat of eminent domain and others as an opportunity or justification to extract more from Connecticut taxpayers for selling their development rights to the state or even a reason to expedite the sale and/or development of their farm.

In addition, developing a detailed statewide list of farms with the superior qualities required for the Farmland Preservation Program will provide an invaluable resource for those who seek to convert farms to nonagricultural uses.

Finally, the proposal requires the Commissioner of Agriculture to establish a stewardship program to ensure that agricultural lands preserved pursuant to the program are maintained in compliance with any applicable preservation deed covenants and requires the Department to visit each agricultural land preserved not less than once every three years.

The Department believes there are more stewardship activities conducted by program staff than reported and documented by the committee. In addition to formal stewardship reviews and actions, there are unscheduled farm inspections that routinely occur in conjunction with other projects and program activity. Staff observations are not necessarily communicated to farm owners unless the site visit reveals issues that require corrective action. For unrelated regulatory purposes, other DoAg personnel conduct farm visits that are not recorded as Farmland Preservation compliance visits, but often result in referrals to Farmland Preservation for review and investigation.

The United States Department of Agriculture (USDA)'s Natural Resources Conservation Service (NRCS) also conducts site visits, and the USDA's Federal Farm and Ranch Lands Protection Program (FRPP) requires annual compliance reports on farms protected with federal funds.

Other examples of stewardship activities include reviews of property sales and transfers. Connecticut General Statutes require that the commissioner of agriculture be notified of the transfer of ownership of lands enrolled in the purchase of developments rights program. While there are instances where the agency has not been properly notified, there is no statutory provision to assess a penalty for noncompliance. Perhaps there should be, as well as statutory authority that allows enhanced tools for enforcement and recovery of resources when protected farmland owners violate deed restrictions. State statute also requires land owners of any property encumbered by a conservation easement to

obtain a letter of approval by the conservation entity, prior to issuing any municipal permits.

With the growing number of farms protected under the Farmland Preservation Program, a more robust stewardship effort is required. A commitment is necessary to adequately protect the significant investment taxpayers have made to acquire development rights to nearly 300 farms and 40,000 acres across Connecticut.

DoAG should have a robust stewardship program to ensure compliance with development rights deed restrictions. Current fiscal constraints impede progress on this front.

Farms protected using federal funds mandate a stewardship inspection on an annual basis. There are now over 100 farms that require annual stewardship reviews. Stewardship also involves the review and analysis of applications to conduct permitted activities including the construction of residences, agricultural structures, farm ponds, farm roads, wells, septic systems, etc. Experience indicates that stewardship issues may require significant staff time and the assistance of legal counsel.

Given the exhaustive nature of the study and review of this program the Connecticut Department of Agriculture respectfully requests that language concerning soil-loss on preserved lands be included in the proposal.

The Farmland Preservation Program should adopt specific standards associated with the permissible level(s) of soil-loss on state-preserved farmland. The standards should conform to any prevailing best practices for such soil loss developed by the federal government (e.g., USDA Natural Resources Conservation Service) or through peer-reviewed academic research. Any resulting soil-loss standards should first be reviewed by the Farmland Preservation Advisory Board. The board should then advise the Department of Agriculture commissioner regarding such standards, with final approval of any standards by the commissioner. As best as possible, farmers' compliance with soil-loss standards should be part of the Farmland Preservation Program's stewardship efforts.

Connecticut's Farmland Preservation Program is based primarily on soil quality with the purpose of keeping farmland available for agricultural production in perpetuity. There is nothing more important than protecting prime and important farmland soils.

Decisions regarding this critical stewardship responsibility should be based on sound science. DoAg has engaged the services of experts in this regard, has initiated a review of a previous study, and is pursuing the review and analysis of farming practices and their impact on soils to develop appropriate standards.

State and federal requirements have become more complicated, labor intensive, and time consuming. There is a direct correlation between the myriad of rules, staff resources, and the number of farms that can be preserved in any given year.

Once again, thank you for the committee's review of DoAg's Farmland Preservation Program and this proposed legislation. Your Committee's work confirms the Department's belief that Connecticut's farmland protection efforts represent one of the best programs in the country and continues to be a

**model for others to follow.**